

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 84-22

TO: ALL INTERESTED PARTIES

SUBJECT: Availability of Section 402(a)(3) Exemption to Securities Covered by Letters of Credit

General Background

The Bureau has received a number of inquiries on whether securities covered by letters of credit issued by banks are exempt under Section 402(a)(3). Section 402(a)(3) is similar in scope to Section 3(a)(2) of the Securities Act of 1933 which provides an exemption for "...any security issued or guaranteed by any bank" (Emphasis added.)

In the matter of Merrill Lynch, Pierce, Fenner & Smith, Incorporation (Available May 3, 1982), the SEC took a no action position respecting certificates on which the principal and interest would be fully covered by irrevocable standby letters of credit from banks. The SEC rationale was that such certificates were exempt from registration under Section 3(a)(2) of the Securities Act of 1933 because the letters of credit were analogous to bank guarantees of the certificates. The SEC letter noted that:

Such exemption does not result from, nor is conditioned upon, the fact that the underlying certificates in the pool are themselves securities exempt from registration requirements of the Securities Act

These letters of credit are tantamount to guarantees by the banks of the certificates. Under these circumstances, the exemption from registration provided by Section 3(a)(2) of the 1933 Act for securities guaranteed by a bank would be available for the certificates, and our no-action position was based on this analysis.

This Bureau subsequently issued two letters based on the reasoning of Merrill Lynch. In C & C Interstate Financial Corporation of South Florida (#E-8082), a no action position was taken; while on EDC of the City of Grand Rapids (#E-8218), the Bureau declined to issue a no action letter because the letter of credit terminated prior to the maturity of the bonds and secured only the payment of the principal on the bonds and not the interest. Therefore, the Bureau took the position that the letter of credit was not tantamount to a "guarantee" and thus exempt under Section 402(a)(3).

Action or Interpretation:

In situations where a security is covered by an unconditional, irrevocable letter of credit issued by a bank covering both principal and interest and running for the full term of the bonds, the Bureau will take the position that such letter of credit is tantamount to a guarantee by the bank and that the securities are exempt pursuant to Section 402(a)(3). Care should be taken, however, to distinguish a letter of credit covering the security from a letter of credit covering the obligations underlying the security.

Authority:

Act 265 of 1964, Section 402(a)(3) and Section 413(f).

Signed by E. C. Mackey, Director
Corporation & Securities Bureau
Dated: April 6, 1984

- (3) A corporation purchases the assets and assumes the liabilities of a business trust or REIT in exchange for its stock. The trust or REIT is then terminated and the corporation stock distributed in liquidation to the beneficial owners of the trust or REIT. The transaction involving the exchange of assets for stock and the termination of the trust is subject to approval by a majority vote of the beneficial owners and is similar to the vote of shareholders in approving a corporate sale of the assets and dissolution.

Action or Interpretation:

In interpreting the statute, the Bureau has determined that the exemption from registration contained in Section 402(b)(19) is available in the above described fact situations. In each instance, the transaction is sufficiently analogous to those specified in Section 402(b)(19) that registration is not required for investor protection.

The Bureau will no longer issue no action letters or interpretive opinions in these fact situations. Requests for no action letters or interpretive opinions relating to Section 402(b)(19) must be accompanied by a statement of facts describing a situation different from those outlined above. Such requests should be addressed to the Examination Division of the Corporation and Securities Bureau and should be prepared in accordance with the Bureau's Release No. 81-3.

Authority:

Act 265 of 1964, Section 402(b)(19).

Signed by E. C. Mackey, Director
Corporation & Securities Bureau
Dated: July 26, 1982